



JON M. HUNTSMAN, JR.  
*Governor*  
GARY R. HERBERT  
*Lieutenant Governor*

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

### Division of Water Rights

MICHAEL R. STYLER  
*Executive Director*

JERRY D. OLDS  
*State Engineer/Division Director*

#### MEMORANDUM

**TO:** Lee Sim, Assistant State Engineer - Enforcement  
**FROM:** Kerry Carpenter, Enforcement Engineer *KCC*  
**DATE:** 7 December 2005  
**RE:** Documents for placement on Enforcement Database

Per our discussions earlier this week, I have entered three new cases on the Enforcement database as follows:

#### SEAA NO. ALLEGED VIOLATOR

1103	Kingston, Merlin B.
1104	Gunnison Fayette Canal Co. / Warm Creek Ranch (Clair Dorius)
1105	Phillips, Mike

Attached are copies of the complaints received in each case. I have attached a Post-it note to each complaint identifying the SEAA number and the location of the original document, to the best of my knowledge.

It is my understanding that you will work with Tina and Technical Services to arrange for these documents to be posted on the website either as "TIF" or "pdf" images.

I have other documents in my "working file" which I have generated or obtained, but I'd don't believe those are ready for posting until/unless referenced or incorporated into a formal "proceeding" document. Please advise if I'm not following proper procedure.



**Holme Roberts & Owen LLP**  
*Attorneys at Law*

SALT LAKE CITY

November 3, 2005

**VIA FAX AND US MAIL – 538-7440**

Heather Shilton, Esq.  
Utah Attorney General  
1594 West North Temple, #300  
Salt Lake City, Utah 84116

BOULDER

COLORADO SPRINGS

Re: *Merlin B. Kingston*

Dear Heather:

DENVER

Enclosed please find some information for your review which may merit a possible enforcement action. The pertinent Applications to Appropriate, Nos. 31-4323 and 31-4324, were denied by Memorandum Decision of the State Engineer in January 2005. The primary basis for denial was the lack of availability of unappropriated water because Water Right No. 31-2058 was already approved and certificated and accounts for all of the water in the source, the A-1 drain.

LONDON

Water Right No. 31-2058 is owned by the Bureau of Reclamation and the water is used by the Division of Wildlife Resources pursuant to contract. The contract and other materials are enclosed.

LOS ANGELES

The applicant, Merlin B. Kingston, appealed the denial to the District Court and because my client, Weber Basin Water Conservancy District, filed a protest, it was named as a defendant. The Bureau of Reclamation declined to participate, which is its usual practice.

MUNICH

Weber Basin sent interrogatories to the plaintiff and in the responses, Mr. Kingston admits that he and his "successor in interest" use the water currently and have been using it for years. This admission was in his response to Interrogatories No. 2, 3, 4 and 13, copy enclosed. Merlin B. Kingston's successor in interest is Coalt, Inc., the current owner of the real property where the water rights would be used. Since the Applications have never been approved and all of the water in the A-1 drain is appropriated under 31-2058, this admission is troubling.

SAN FRANCISCO

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DEC - 9 2005

WATER RIGHTS  
SALT LAKE

Catherine L. Brabson 801.323.3256 catherine.brabson@hro.com

299 South Main Street, Suite 1800 Salt Lake City, Utah 84111-2263 tel 801.521.5800 fax 801.521.9639

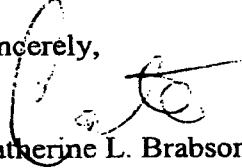
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**Holme Roberts & Owen LLP**  
*Attorneys at Law*

Heather Shilton, Esq.  
November 3, 2005  
Page 2

If you have any questions or need any additional information, please do not  
hesitate to contact me.

Sincerely,



Catherine L. Brabson  
enclosures

CLB/kaw

CARL E. KINGSTON (#1826)  
Attorney for Plaintiff  
3212 South State Street  
Salt Lake City, Utah 84115  
Phone: 486-1458

SECOND DISTRICT COURT, STATE OF UTAH, DAVIS COUNTY

---ooo0ooo---  
MERLIN B. KINGSTON, :  
Plaintiff, : ANSWERS TO  
INTERROGATORIES  
vs. :  
Civil No. 050700119  
JERRY D. OLDS, STATE ENGINEER; :  
WEBER BASIN WATER CONSER- :  
VANCY DISTRICT; and UNITED :  
STATES OF AMERICA, BUREAU OF :  
RECLAMATION, : Judge: Jon M. Memmott  
Defendants. :  
---ooo0ooo---

Comes now the Plaintiff pursuant to the Utah Rules of Civil Procedure and answers Defendant Weber Basin Water Conservancy District's Interrogatories, as follows:

INTERROGATORY NO. 1: State the basis for your contention in paragraph 8 of your complaint that the waters sought to be appropriated under the Applications were and still are available to be appropriated.

ANSWER: The water is and has been available at the sources sought, as detailed in the applications and is not being used by anyone else.

INTERROGATORY NO. 2: State the basis for your contention in paragraph 8 of your complaint that the proposed use of water under the Applications would not impair existing rights or interfere with more beneficial uses.

ANSWER: The water sought to be appropriated, has been for years and is

currently being used by Plaintiff and his successor in interest and is not being used by anyone other than Plaintiff.

INTERROGATORY NO. 3: State the basis for your contention in paragraph 8 of your complaint that the plan of use under the Applications is economically and physically feasible.

ANSWER: Plaintiff and his successor in interest have been using the water for several years.

INTERROGATORY NO. 4: State the basis for your contention in paragraph 8 of your complaint that the applicant has the financial ability to complete the proposed means of use specified in the Applications.

ANSWER: Plaintiff and his successor in interest have been using the water for several years.

INTERROGATORY NO. 5: State the basis for your contention in paragraph 8 of your complaint that the Applications were filed in good faith.

ANSWER: The water is available on the subject property and has not been used by anyone else.

INTERROGATORY NO. 6: State the basis for your contention in paragraph 9 of your complaint that "the State Engineer's rejection of the Applications was in error."

ANSWER: Plaintiff objects to this Interrogatory as calling for a legal conclusion. Without waiving this objection, Plaintiff states that all criteria for the proper appropriation of water was met by plaintiff.

INTERROGATORY NO. 7: Please describe with particularity or identify the unappropriated water and the source identified in the Applications which is available.

ANSWER: The water is that which is in open ditches across the subject property, as set forth in the applications.

INTERROGATORY NO. 8: Identify with specificity by meets and bounds, map

or other specific means, the acreage in Sections 26 and 27, T2NR1W, that will be irrigated under the Applications.

ANSWER: The meets and bounds descriptions are set forth in the applications.

INTERROGATORY NO. 9. Identify with specificity by meets and bounds, map or other specific means, the acreage in any and all of your real property in Sections 26 and 27, T2NR1W, that is not presently irrigated under existing vested water rights.

ANSWER: The subject property was transferred to Coalt, Inc., the current owner and Plaintiff's successor in interest. Plaintiff transferred the subject water rights along with the property. Plaintiff will move to amend the Complaint to name Coalt, Inc. as the proper Plaintiff.

INTERROGATORY NO. 10. Identify all persons having discoverable knowledge of your claim in this matter and for each person, describe with particularity the basis and substance of their knowledge.

ANSWER: Plaintiff, who can be contacted through counsel;

Chris Grundvig, P. O. Box 577, Huntington, Utah 84528, phone (435) 687-5670. Mr. Grundvig worked for Plaintiff and his successor in interest for many years and used the water from the sources for irrigation on the subject property;

Carlos Owen, 1505 West 2280 South, Salt Lake City, Utah, phone (801) 973-9968. Mr. Owen worked for Plaintiff and his successor in interest for many years and used the water from the sources for irrigation on the subject property;

Jerry Kingston, 3753 South State Street, Salt Lake City, Utah, phone (801) 262-5493. Mr. Kingston worked for Plaintiff and his successor in interest for many years and used the water from the sources for irrigation on the subject property.

INTERROGATORY NO. 11. Identify all documents, regardless of location, possession, custody or control, on which you intend to rely to substantiate your claim that the State Engineer's Memorandum Decision concerning the Applications were in error.

ANSWER: Plaintiff's discovery is not complete and it is not known what

documents Plaintiff may rely upon. Such documents will be identified at such time as they are known.

INTERROGATORY NO. 12. Identify all individuals relied upon by you in responding to the Weber Basin's First Set of Interrogatories.

ANSWER: Plaintiff and Jerry Kingston.

INTERROGATORY NO. 13. For each Request for Admission in Weber Basin's First Set of Requests for Admissions which you deny, state the basis for your denial.

ANSWER: See Plaintiff's responses to Requests for Admissions. Plaintiff believes that the water sought to be appropriated is and always has been available for appropriation, because it has always been available for use and Plaintiff has been using the water.

Dated this 20 day of September, 2005.

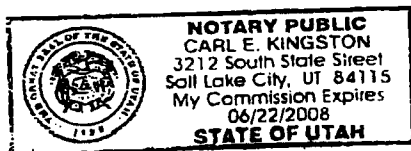
Merlin Kingston  
Merlin Kingston

STATE OF UTAH    )  
                              :SS.  
County of Salt Lake    )

Merlin Kingston, being first duly sworn, says that he is the Plaintiff named in the above captioned matter, that he has read the foregoing Answers to Interrogatories and that they are true to the best of his knowledge, information and belief.

Merlin Kingston  
Merlin Kingston

Subscribed and sworn to before me this 20 day of September, 2005



[Signature]  
Notary Public

**WADDINGHAM & PETERSON**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

THORPE WADDINGHAM (RETIRED)

WARREN H. PETERSON

RICHARD WADDINGHAM

GREG GREATHOUSE

362 WEST MAIN STREET

DELTA, UTAH 84624

(435) 864-2748

FAX (435) 864-2740

November 2, 2005

*Sent via facsimile to (435) 893-8114*

Kirk Forbush, P.E.  
Regional Engineer  
Utah Division of Water Rights  
Richfield Area Office  
P.O. Box 563  
Richfield, UT 84701

RE: Request for Enforcement Action in Section 13,  
Township 18 South, Range 1 West, SLB&M

Dear Mr. Forbush:

Your office recently approved temporary change no. t30674, with conditions. One of those conditions was a prohibition of irrigation after October 15, 2005, in accordance with the limitations on Gunnison-Fayette Canal Company water rights contained on page 200 of the Cox Decree. The limitation in your letter was appropriate and consistent with law.

The water commissioner for the lower Sevier River distribution system checked for water use at the location proposed under temporary change no. t30674 on October 16, October 22, and November 1. On November 1, he found a center-pivot sprinkler in operation in the NW1/4NE1/4, the SW1/4NE1/4, and the SE1/4SE1/4 of Section 13, Township 18 South, Range 1 West, SLB&M. Further investigation indicates that the center sprinkler system was applying water to this land on at least October 31 and November 1. This water use directly violates the conditions contained in your October 11, 2005 approval letter for Temporary Change Appl. No. t30764 and page 200 of the Cox Decree. Page 200 reads:

All rights designated as "Fall Water" allocated to Westview Irrigation Company, Gunnison Fayette Canal Company and Dover Irrigation Company shall be strictly appurtenant to the lands under their said canals respectively as now constructed and any and all rights, if any, to transfer the use of said water to other lands is hereby waived. [Emphasis added.]

Photographs of the water use were taken during the inspection on November 1. Two of those photographs are printed on this letter.



Kirk Forbush  
Page 2  
November 2, 2005

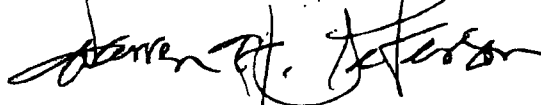
*Clair*

Given that Mr. Doruis had clear instructions on when the water in question could be used, we request that an immediate notice of violation and cease and desist order be issued pursuant to Utah Code Annotated § 73-2-25 and Utah Administrative Rules R655-14-11. We further request that penalties be imposed pursuant to UCA § 73-2-26 for each separate day of violation, including a requirement that the water rights in question be replaced as provided in UCA § 73-2-26(3). The replacement water should be provided to the owners of Sevier Bridge Reservoir inasmuch as their fall storage water was compromised by use of water after October 15, 2005 in violation of the Cox Decree and the October 11, 2005 approval letter.

Please notify us of any proceedings with respect to these violations. Please feel free to contact our office if you wish to discuss any of the requests or information contained in this letter. Thank you for your attention to this request.

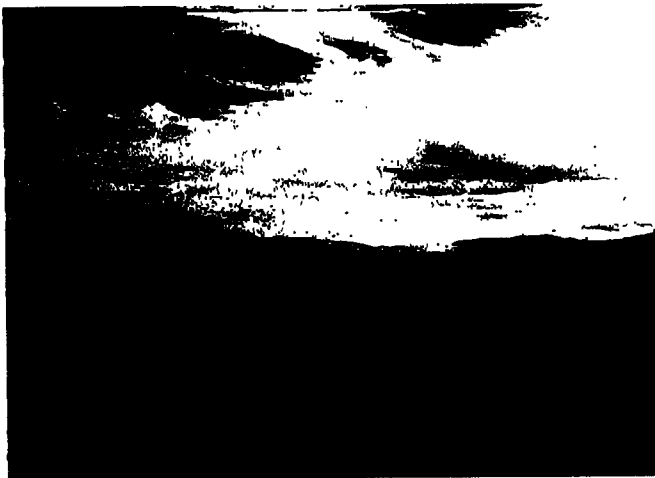
Sincerely yours,

WADDINGHAM & PETERSON, P.C.



Warren H. Peterson

WHP/lh



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NOV 21 2005

WATER RIGHTS  
LOGAN

November 18, 2005

Robert Fotheringham  
Utah Water Rights Division  
1780 North Research Parkway  
North Logan, Utah 84341

Dear Mr. Fotheringham,

For your information, a well, located at approximately 620 South 800 West (Smithfield address) has been uncapped and free flowing for several months now. It is my understanding that the well was permitted as a domestic, culinary well.

Will you please take immediate action, as you deem appropriate, to bring the well usage into compliance with its' permitted use.

Sincerely,



Jeffry R. Gittins  
Summit Creek Distribution Commission Chairman

**RECEIVED**

NOV 22 2005

WATER RIGHTS  
CEDAR CITY

25-9487 Mike Phillips